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BURNS DOANE SWECKER & MATHIS L L P
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EXAMINER

GRiffin, WALTER DEAN

ART UNIT

PAPER NUMBER

1764

DATE MAILED: 10/31/2002

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/490,147

Applicant(s)

FREEL ET AL.

Examiner

Walter D. Griffin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
 Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 19 August 2002.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-3,8-17,22-28,30-32,37-42,44-48,52-59,63-70,73-77,79 and 80 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-3,8-17,22-28,30-32,37-42,44-48,52-59,63-70,73-77,79 and 80 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.

4) Interview Summary (PTO-413) Paper No(s) _____.

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 19, 2002 has been entered.

Response to Amendment

The rejections described in paper no. 8 have been withdrawn in view of the amendment filed on January 18, 2002.

New rejections follow.

Specification

The disclosure is objected to because of the following informalities: The specification does not include a reference to parent application 09/071,793 in the first line of page 1.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claim 77 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 77 is indefinite because the expression "low emissions" in the last line of the claim is a relative expression that is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 79 and 80 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaneko et al. (5,401,280).

The Kaneko reference discloses a process of blending a gasoline in which the sulfur content of the gasoline is less than 20 ppmw. (See col. 3, lines 16-21 and col. 5, lines 40-63.)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-3, 8-17, 22-28, 30-32, 37-42, 44-48, 52-59, 63-70, and 73-77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jessup et al. (5,288,393) in view of Kaneko et al. (5,401,280).

The Jessup reference discloses an unleaded gasoline composition and method of blending the composition. The gasoline composition has a maximum Reid vapor pressure of 7.5 psi, a 50% D-86 distillation point of no greater than 215°F, and a 90% D-86 distillation point of no greater than 315°F. Olefin contents are essentially zero. Jessup specifically discloses that the gasoline requires no methyl tertiary butyl ether to be present in the composition. This discloses the limitation that the gasoline is substantially free of oxygenates. The paraffin content of the gasoline is preferably greater than 85 vol%. This teaching of paraffin content would necessarily require aromatic content to be less than 15 vol%. However, Jessup also discloses that

hydrocarbon emissions are reduced when the aromatics content is increased. See entire document, especially column 1, line 27 through column 7, line 58, column 14, lines 3-68, column 15, lines 20-46, and column 17, line 57 through column 18, line 4.

Jessup does not disclose the claimed sulfur content of the gasoline and does not disclose an aromatics content of between 25 and 30 vol%.

The Kaneko reference discloses a gasoline composition in which the sulfur content of the gasoline is preferably below 20 ppmw. See col. 3, lines 16-21.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the gasoline composition of Jessup by limiting the sulfur concentration to values within the range disclosed by Kaneko because a gasoline with this amount of sulfur would not harm the exhaust gas cleaner.

It also would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the gasoline of Jessup by having the aromatics content be between 25 and 30 vol% because increasing aromatics content over that which is explicitly disclosed to values within the claimed range would result in the expectation that hydrocarbon emissions would be reduced.

Providing these modifications to the gasoline of Jessup would necessarily result in a gasoline that fails the predictive model requirements for emissions.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed.

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Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-3, 8-17, 22-28, 30-32, 37-42, 44-48, 52-59, 63-70, 73-77, 79, and 80 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-45 of copending Application No. 09/266901. Although the conflicting claims are not identical, they are not patentably distinct from each other because each set of claims is drawn to a method of blending a gasoline and the gasoline composition. The claims differ by certain ranges for characteristics of the gasoline. However, the gasoline in the present claims and in the claims in 09/266901 have overlapping characteristic values.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-3, 8-17, 22-28, 30-32, 37-42, 44-48, 52-59, 63-70, 73-77, 79, and 80 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16, 20-35, 39-54, and 58-71 of copending Application No. 09/603556. Although the conflicting claims are not identical, they are not patentably distinct from each other because each set of claims is drawn to a method of blending a gasoline and the gasoline composition. The claims differ by certain ranges for characteristics of the gasoline.

However, the gasolines in the present claims and in the claims in 09/603556 have overlapping characteristic values.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-3, 8-17, 22-28, 30-32, 37-42, 44-48, 52-59, 63-70, 73-77, 79, and 80 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14, 17-32, and 35-45 of copending Application No. 09/603557. Although the conflicting claims are not identical, they are not patentably distinct from each other because each set of claims is drawn to a method of blending a gasoline and the gasoline composition. The claims differ by certain ranges for characteristics of the gasoline. However, the gasolines in the present claims and in the claims in 09/603557 have overlapping characteristic values.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-3, 8-17, 22-28, 30-32, 37-42, 44-48, 52-59, 63-70, 73-77, 79, and 80 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14, 17-33, and 36-49 of copending Application No. 09/603899. Although the conflicting claims are not identical, they are not patentably distinct from each other because each set of claims is drawn to a gasoline composition. The claims differ by certain ranges for characteristics of the gasoline. However, the gasolines in the present claims and in the claims in 09/603899 have overlapping characteristic values.

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This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-3, 8-17, 22-28, 30-32, 37-42, 44-48, 52-59, 63-70, 73-77, 79, and 80 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16, 20-35, 39-54, and 58-68 of copending Application No. 09/977395. Although the conflicting claims are not identical, they are not patentably distinct from each other because each set of claims is drawn to a method of blending a gasoline and the gasoline composition. The claims differ by certain ranges for characteristics of the gasoline. However, the gasolines in the present claims and in the claims in 09/977395 have overlapping characteristic values.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-3, 8-17, 22-28, 30-32, 37-42, 44-48, 52-59, 63-70, 73-77, 79, and 80 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19, 23-35, and 39-51 of copending Application No. 09/603585. Although the conflicting claims are not identical, they are not patentably distinct from each other because each set of claims is drawn to a method of blending a gasoline and the gasoline composition. The claims differ by certain ranges for characteristics of the gasoline. However, the gasolines in the present claims and in the claims in 09/603585 have overlapping characteristic values.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-3, 8-17, 22-28, 30-32, 37-42, 44-48, 52-59, 63-70, 73-77, 79, and 80 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-25 of U.S. Patent No. 6,132,479. Although the conflicting claims are not identical, they are not patentably distinct from each other because each set of claims is drawn to a method of blending a gasoline and the gasoline composition. The claims differ by certain ranges for characteristics of the gasoline. However, the gasolines in the present claims and in the claims in the patent have overlapping characteristic values.

Claims 1-3, 8-17, 22-28, 30-32, 37-42, 44-48, 52-59, 63-70, 73-77, 79, and 80 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-107 of U.S. Patent No. 6,383,236. Although the conflicting claims are not identical, they are not patentably distinct from each other because each set of claims is drawn to a method of blending a gasoline and the gasoline composition. The claims differ by certain ranges for characteristics of the gasoline. However, the gasolines in the present claims and in the claims in the patent have overlapping characteristic values.

Response to Arguments

The argument that the Kaneko reference supports the patentability of the claimed invention because Kaneko discloses the presence of an oxygenate whereas the claimed gasoline is substantially oxygenate free is not persuasive. The examiner asserts that the teaching in Kaneko that sulfur concentrations above a certain amount can damage the exhaust gas cleaner would motivate one of ordinary skill in the art to reduce sulfur amounts to levels within the claimed range regardless of the presence or absence of oxygenates in the gasoline.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art not relied upon discloses gasoline compositions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter D. Griffin whose telephone number is 703-305-3774. The examiner can normally be reached on Monday-Friday 6:30 to 4:00 with alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marian Knodel can be reached on 703-308-4311. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

Walter D. Griffin
Walter D. Griffin
Primary Examiner
Art Unit 1764

WG
October 29, 2002